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SUPREME COURT, U. S.

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IN THE SUPREME COURT OF THE UNITED STATES

WAYNE E. CHESNICK, PETITIONER

VS.

K. WALDEMAR ANDERSON, A/K/A
VAL ANDERSON, MINNESOTA STATE
TREASURER, ROLLAND C. HATFIELD,
MINNESOTA STATE AUDITOR, AND
THE STATE OF MINNESOTA,
RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI
TO REVIEW FINAL JUDGMENT OF A STATE
COURT.

WAYNE E. CHESNICK
IN PRO PER
15361 HIGHLAND PLACE
MINNETONKA, MINNESOTA
55343

IN THE SUPREME COURT OF THE UNITED STATES

WAYNE R. CHERMACK, PETITIONER,

VS.

K. VALDIMAR BJORNSON, A/K/A VAL BJORNSON, MINNESOTA STATE TREASURER, ROLLAND G. HATFIELD, MINNESOTA STATE AUDITOR, AND THE STATE OF MINNESOTA,

RESPONDENTS.

PETITION FOR A WRIT OF CERTIORARI

TO: THE SUPREME COURT OF THE UNITED STATES AND TO THE JUSTICES THEREOF;

Comes now the Petitioner, Wayne R. Chermack, and for his Petition herein states and alleges:

1. This is a Petition to appeal the final Judgment of the Supreme Court of Minnesota and its decision entered herein on November 22, 1974.

The case is reported as Chermack vs. Bjornson, 223 N.W.2d 659 and is set forth in full as Appendix "A" Attached hereto.

2. The date of the Judgment or Decree sought to be reviewed is November 22, 1974 It was entered by the Clerk of the Supreme Court of Minnesota on Dec 6 1974

3. No application for a re-hearing was made because there were no new matter that could be presented to the Cupreme Court of Minnesota which would have changed its decision.

4. This Court has jurisdiction to grant this Writ pursuant to 28 U.S.Code Section 1257 because there are statutes of the United States which are drawn into question which are repugnant to the Constitution of the United States.

QUESTION PRESENTED FOR REVIEW

1. Can the Minnesota State Treasurer, K. Valdimar Bjornson, make some Thing other than gold and silver Coin a Tender in Payment of Debts?

The Court below held - Yes.

CONSTITUTIONAL PROVISIONS AND STATUTES WHICH THE CASE INVOLVES.

1. Article I Section 8 Clause 5:

" The Congress shall have Power..... To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

2. Article I Section 10 Clause I.

"No State shall make any Thing but gold and silver Coin a Tender in Payment of Debts;....pass any law impairing the Obligation of Contracts,...."

4. 31 U.S.Code Section 392;

"All coins and currencies of the United States (including Federal Reserve Notes and circulating notes of Federal Reserve banks and National Banking Associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues."

5. 31 U.S.Code Sec. 463;

"Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts."

STATMENT OF THE CASE

1. On June 22, 1973, Petitioner presented a State Warrant, signed by K. Valdimar Bjornson, as Minnesota State Treasurer, in the sum of $1,035.52 and demanded that he be Tendered payment in gold and silver Coin. This demand was not satisfied, Petitioner therefore started suit in the Ramsey County District Court for Judgment in the amount against the State Treasurer and for declaratory relief that the Minnesota State Treasurer could not "make any Thing but gold and silver Coin a Tender in Payment of the Debt."

The Pleadings asked that the prohibition against all State Officials contained in Article 1 Section 10, "No State shall make any Thing but gold and silver Coin a Tender in Payment of Debts" be upheld.

The trial Court, the Ramsey County District Court dismissed the case upon the Pleadings and the Supreme Court of Minnesota Affirmed by their decision on November 22, 1974.

The Federal question was raised in the first instance by making a written demand upon the Minnesota State Treasurer for gold and silver Coin. The language of the demand was in the exact language of the Constitution of the United States. Petitioner has maintained the same theory all the way to this Court.

ARGUMENT

The question presented for review is very simple.

What can the State Treasurer Tender in Payment of Debt when one of his Warrants is Tendered to him for payment?

There are no cases directly in point involving what a State official may Tender in Payment of Debts.

In Article I Section 10 the prohibitions contained in the 1st paragraph are absolutely binding upon all State Officials. Congress cannot give its consent to any State Official to violate these prohibitions.

See The State of Rhode Island vs. The State of Massachusetts, 37 U.S. 657,724; 12 Peters 657, 724 (1838); also Edwards v. Kearzey, 96 U.S. 595,604 (1877); also see Holmes v. Jennison 39 U.S. 540,570; Peters, Vol 14 page 540, 570, (1840)

In the second and third paragraphs there are prohibitions against the States that may be avoided with the "Consent" of the Congress.

Article I Section 10 so far as it applies to this case reads exactly as follows:

"No State shall make any Thing but gold and silver Coin a Tender in Payment of Debts."

It is to be noted that the words "Thing" "Coin", "Tender", "Payment" and "Debts", are all capitalized, thus, giving each word a special objective significance and making it a proper noun.

The Minnesota State Treasurer is absolutely prohibited from making any Thing but gold and silver Coin a Tender in Payment of the State Warrant.

No power under the government can make Title 31 Sections 392 and 463 valid as applied to the facts in this case. These Statutes are repugnant to the Constitution of the United States.

There is no case in point. Every U.S. Supreme Court decision over looks the precise punctuation of Article I Section 10 paragraph 1.

This absolute prohibition is unambiguous and contains no qualification. It is subject to only one construction. Therefore, one needs to look no further than the language of the Constitution itself.

The people said what they meant and they meant what they said.

It is respectfully requested that this Court grant a Writ of Certiorari directing the Supreme Court of Minnesota to certify up the record to the end that its decision and Judgment be reversed with appropriate directions from this Court.

Respectfully submitted,

Wayne R. Chermack
In Pro Per
15361 Highland Place
Minnetonka,Minnesota
55343

STATE OF MINNESOTA
SS
COUNTY OF HENNEPIN

Wayne R. Chermack, having been first duly sworn deposes and states that he has read the foregoing Petition, knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

Wayne R. Chermack

Subscribed and sworn to before me this 17th day of February, 1975.

Notary Public

EXHIBIT "A"

Cited as 223 N.W.2d 659

Wayne R. CHERMACK, Appellant,

v.

E. Valdimar BJORNSON, a.k.a. Val Bjornson, Minnesota State Treasurer, et al., Respondents.

No. 44730.

Supreme Court of Minnesota.

Nov. 22, 1974.

Action for declaratory relief brought by plaintiff whose demand that income tax refund be tendered in gold and silver coins was not satisfied. The District Court, Ramsey County, Harold W. Schultz, J., dismissed action with prejudice and plaintiff appealed. The Supreme Court held that United States constitutional article providing that no state shall make anything but gold and silver coin a tender in payment of debts is a constitutional limitation upon power of states and not on powers of Congress; that Congress has power to establish uniform legal tender and prohibit all other forms of currency exchange, and that State Treasurer and Auditor were not constitutionally required to tender payment of refunds in gold or silver coin.

Affirmed.

1. States ⇐4.2
United States ⇐34

United States constitutional article providing that no state shall make anything

but gold and silver coin a tender in payment of debts is a constitutional limitation upon power of states and not on powers of Congress. U.S.C.A.Const. art. 1, § 10, cl. 1.

2. United States ⇐34

Congress has power to establish uniform legal tender and prohibit all other forms of currency exchange. U.S.C.A. Const. art. 1, § 8.

3. United States ⇐34

Constitution leaves to Congress the power to declare what shall be legal tender for payment of all debt. U.S.C.A.Const. art. 1, §§ 8, 10; 31 U.S.C.A. § 463.

4. United States ⇐34

Mere utilization of standard of legal tender prescribed by Congress is not state action as prohibited by United States constitutional article providing that no state shall make anything but gold and silver coin a tender in payment of debts, but rather is an effectuation of validly exercised constitutional power of Congress. U.S.C.A.Const. art. 1, §§ 8, 10; 31 U.S.C.A. § 463.

5. Payment ⇐12(1)

State Treasurer and Auditor were not constitutionally required to tender payment of state income tax refunds in gold or silver coin. U.S.C.A.Const. art. 1, §§ 8, 10; 31 U.S.C.A. § 463.

Wayne R. Chermack, pro se.

Warren Spannaus, Atty. Gen., Jonathan H. Morgan, Sol. Gen., Kenneth E. Raschke, Jr., Sp. Asst. Atty. Gen., St. Paul, for respondents.

Heard before OTIS, PETERSON, and SCOTT, JJ., and considered and decided by the court en banc.

PER CURIAM.

This is an appeal from an order of the District Court of Ramsey County dismissing an action "with prejudice" on the basis that

the complaint failed to state a claim upon which relief could be granted.

Plaintiff-appellant seeks relief, on appeal, on the basis of errors of law and fact. We affirm.

On June 22, 1973, plaintiff presented to the state treasurer for payment his Minnesota state income tax refund warrant. He demanded that the amount of the refund, $1,035.52, be tendered in gold and silver coin, under Article I, § 10, of the United States Constitution, which provides, in part: "No state shall * * * make any thing but gold and silver coin a tender in payment of debts * * *." This demand was not satisfied, and he sought declaratory relief.

The issue before this court is whether or not defendants, the state treasurer and auditor, are constitutionally required to tender payment to plaintiff in gold or silver coin.

[1, 2] Article I, § 10, of the United States Constitution is a constitutional limitation upon the power of the states and not on the powers of Congress. Under Article I, § 8, of the United States Constitution, the power of Congress to establish a uniform legal tender and prohibit all other forms of currency exchange has been long established. In Norman v. Baltimore & Ohio R. Co., 294 U.S. 240, 303, 55 S.Ct. 407, 414, 79 L.Ed. 885, 900, 95 A.L.R. 1352, 1366 (1935), the Supreme Court stated:

> "* * * The broad and comprehensive national authority over the subjects of revenue, finance, and currency is derived from the aggregate of the powers granted to the Congress, embracing the powers to lay and collect taxes, to borrow money, to regulate commerce with foreign nations and among the several States, to coin money, regulate the value thereof, and of foreign coin, and fix the standards of weights and measures, and the added express power 'to make all laws which shall be necessary and proper for carrying into execution' the other enumerated powers. * * *

"The Constitution '*was designed to provide the same currency, having a uniform legal value in all the States.*' It was for that reason that the power to regulate the value of money was conferred upon the Federal government, while the same power, as well as the power to emit bills of credit, was withdrawn from the States. The States cannot declare what shall be money, or regulate its value. Whatever power there is over the currency is vested in the Congress." (Italics supplied.)

Congress provided in 31 U.S.C.A. § 463, in part, that:

"Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts."

[3–5] The courts have consistently held that the Constitution leaves the power to declare what shall be legal tender for the payment of all debts to Congress. The mere utilization of a standard of legal tender prescribed by Congress is not state action as prohibited by U.S.Const., Art. I, § 10, but rather an effectuation of validly exercised constitutional power of Congress under U.S.Const., Art. I, § 8. The defendants, therefore, have acted in accordance with the Constitution, the Federal law, and public policy. The trial court was correct in dismissing this action with prejudice on the grounds that the complaint failed to state a claim upon which relief could be granted.

Affirmed.